

Introduced by Senator Perata
(Principal coauthor: Senator Ackerman)
(Principal coauthors: Assembly Members McCarthy and Nunez)
(Coauthor: Senator Ortiz)
(Coauthor: Assembly Member Chan)

February 6, 2006

An act to amend Section 14133.23 of the Welfare and Institutions Code, and to amend Section 2 of Chapter 2 of the Statutes of 2006, relating to Medi-Cal, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1233, as introduced, Perata. Medi-Cal: prescription drug benefit.

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Services and under which qualified low-income persons receive health care benefits, including, for certain beneficiaries, prescription drug benefits. The Medi-Cal program is, in part, governed and funded by federal Medicaid provisions.

Existing law provides for the federal Medicare Program, which provides health care benefits, including prescription drug benefits, to persons 65 years of age and older and other specified persons. Under the Medicare Program, prescription drug benefits are obtained through enrollment in a prescription drug plan offered under the program. Existing law requires Medicare-eligible persons who are also eligible for Medi-Cal prescription drug benefits to obtain those benefits through a prescription drug plan under the Medicare Program, except as specified.

Existing law requires the department, beginning on January 12, 2006, and concluding 15 calendar days later, to provide drug benefits,

when any of specified conditions exists, to a Medicare-eligible person who is also eligible for Medi-Cal prescription drug benefits and who is not able to obtain drug benefits from his or her prescription drug plan under the Medicare Program. Existing law allows the Governor to extend coverage for these drug benefits from the close of the initial 15-day period for up to an additional 15-calendar-day period.

This bill would, instead, require the department to provide the above drug benefits through February 15, 2006. It would allow the Governor, after that date, and upon notice to the Joint Legislative Budget Committee, to extend coverage for those drug benefits for coverage periods of up to 30 days each, but in no event beyond May 16, 2006.

Existing law appropriates \$150,000,000 from the General Fund for the purposes of the extension authorization. By extending the period for which these appropriated funds may be used to include any period for which the drug benefits may be provided pursuant to this bill, this bill would result in an appropriation.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 14133.23 of the Welfare and
- 2 Institutions Code is amended to read:
- 3 14133.23. (a) To the extent that federal financial
- 4 participation is not available, the provision of drug benefits under
- 5 this chapter to full-benefit dual eligible beneficiaries who are
- 6 eligible for drug benefits under Part D of Title XVIII of the
- 7 Social Security Act (42 U.S.C. Sec. 1395w-101 et seq.) or under
- 8 a Medicare Advantage-Prescription Drug plan (MA-PD plan)
- 9 under Part C of Title XVIII of the Social Security Act (42 U.S.C.
- 10 Sec. 1395w-21 et seq.), is eliminated, except as otherwise
- 11 provided under this section.
- 12 (b) (1) Notwithstanding any other provision of law, only drug
- 13 benefits for which federal financial participation is available shall
- 14 be provided under this chapter to a full-benefit dual eligible
- 15 beneficiary, except as otherwise provided under subdivision (c).

(2) As a benefit under this chapter, the department, subject to the approval of the Department of Finance and only to the extent that federal financial participation is available, may elect to provide a drug or drugs in a class of drugs not covered under Part D of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-101 et seq.) or under a MA-PD plan under Part C of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-21 et seq.) to full-benefit dual eligible beneficiaries.

(3) As a benefit under this chapter, and only to the extent that federal financial participation is available, the department shall provide a drug or drugs to full-benefit dual eligible beneficiaries who are otherwise eligible to receive the drug or drugs due to their entitlement under Title 42 United States Code, Chapter 7, Title XVIII, Part A or their enrollment under Title 42 United States Code, Chapter 7, Title XVIII, Part B.

(4) Except as provided under paragraph (3) and subdivision (c), nothing in this section shall be interpreted to require the department to provide any drug or drugs not covered under Part D of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-101 et seq.) or under a MA-PD plan under Part C of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-21 et seq.) if federal financial participation is not available.

(c) (1) The department shall review the drug formularies of prescription drug plans under Part D of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-101 et seq.) or MA-PD plans under Part C of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-21 et seq.) available to full-benefit dual eligible beneficiaries.

(2) The department shall develop a process that would allow the department to provide to a full-benefit dual eligible beneficiary, on an emergency basis only, coverage for a drug or drugs not included on the full-benefit dual eligible beneficiary's prescription drug plan's formulary or by prior authorization under Part D of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-101 et seq.) or MA-PD plans under Part C of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-21 et seq.) for which federal financial participation is not available.

(3) Only to the extent that the Legislature made a specific appropriation to fund the provision of emergency drug benefits for which federal financial participation is not available to

1 full-benefit dual eligible beneficiaries, the department shall
2 provide, through the process described in paragraph (2), these
3 emergency drug benefits to a full-benefit dual eligible
4 beneficiary only when all of the following conditions are met:

5 (A) The drug is not available to the full-benefit dual eligible
6 beneficiary under his or her plan's drug formulary or by prior
7 authorization.

8 (B) The pharmacist provides or dispenses the drug as an
9 emergency service.

10 (C) The quantity of the drug provided or dispensed in no
11 greater than a 60-day supply.

12 (D) The pharmacist has not previously provided or dispensed
13 nor has knowledge that another pharmacist has provided or
14 dispensed the same drug for that full-benefit dual eligible
15 beneficiary on or after January 1, 2006.

16 (E) The date of service is from January 1, 2006, through
17 December 31, 2006, inclusive.

18 (4) The department may impose a pre- or post-service
19 prepayment or postpayment review or audit, to review the
20 medical necessity of emergency services provided to full-benefit
21 dual eligible beneficiaries.

22 (d) The department shall seek approval of any amendments to
23 the state plan necessary to implement this section as required by
24 Title XIX of the Social Security Act (42 U.S.C. Sec. 1396 et
25 seq.).

26 (e) Notwithstanding Chapter 3.5 (commencing with Section
27 11340) of Part 1 of Division 3 of Title 2 of the Government
28 Code, the department may implement, interpret or make specific
29 this section by means of all county letters, provider bulletins, or
30 similar instructions. Thereafter, the department may adopt
31 regulations in accordance with the requirements of Chapter 3.5
32 (commencing with Section 11340) of Part 1 of Division 3 of Title
33 2 of the Government Code.

34 (f) (1) Notwithstanding any other provision of this section,
35 and only to the extent that funds are appropriated for this
36 purpose, the department shall provide on a time-limited basis, as
37 described in ~~paragraph~~ *paragraphs (7) and (8)*, drug benefits to a
38 full-benefit dual eligible beneficiary who is not able to obtain
39 drug benefits from his or her Medicare Drug Plan only when one
40 or more of the following conditions are met:

1 (A) The pharmacy has submitted a claim for the provision of
2 drug benefits to the full-benefit dual eligible beneficiary's
3 Medicare Drug Plan and the claim has been denied payment for
4 reasons other than processing errors or omissions made by the
5 pharmacy, lack of medical necessity, or health or safety reasons.

6 (B) The pharmacy is unable to submit a claim for the
7 provision of drug benefits solely due to the unavailability of
8 complete or accurate Medicare Drug Plan enrollment information
9 from the full-benefit dual eligible beneficiary's Medicare Drug
10 Plan, the federal Centers for Medicare and Medicaid Services, or
11 entities under contract with the Centers for Medicare and
12 Medicaid Services to provide enrollment information.

13 (C) The Medicare Drug Plan provides information that the
14 full-benefit dual eligible beneficiary's deductible or copayment
15 amount is higher than the copayment amounts that are
16 established by Medicare for full-benefit dual eligible
17 beneficiaries.

18 (2) The director may impose a pre- or post-service prepayment
19 or postpayment review or audit to determine whether a pharmacy
20 has accurately and in good faith established the existence of any
21 condition certified by the pharmacy pursuant to subparagraph
22 (A), (B), or (C) of paragraph (1) in support of a submitted claim
23 to the department.

24 (3) If the claim submitted by the pharmacy to the Medicare
25 Drug Plan meets the circumstances described in subparagraph
26 (C) of paragraph (1), the department shall pay the Medi-Cal rate
27 less the Medicare Drug Plan reimbursement amount and the
28 Medicare copayment amount.

29 (4) To obtain reimbursement from the department, a pharmacy
30 must be an enrolled provider in the Medi-Cal program and certify
31 on its claims under penalty of perjury that one of the conditions
32 specified in paragraph (1) exists.

33 (5) The department shall seek reimbursement from the federal
34 government of all funds spent to comply with the provisions of
35 this subdivision.

36 (6) To the extent that the department reimburses a pharmacy
37 for claims authorized under this subdivision, the director shall
38 have the right to recover or recoup the full cost expended by the
39 state for that reimbursement from the full-benefit dual eligible
40 beneficiary's Medicare Drug Plan.

(7) Reimbursement for claims authorized under this subdivision shall be limited to those drug benefits provided to a full-benefit dual eligible beneficiary ~~beginning on~~ from January 12, 2006, ~~and concluding 15 calendar days later. The Governor may, upon notice to the Joint Legislative Budget Committee, extend coverage for drug benefits provided to a full-benefit dual eligible beneficiary from the close of the initial 15-day period for up to an additional 15-calendar-day period to February 15, 2006, inclusive.~~

(8) *After February 15, 2006, the Governor may, upon notice to the Joint Legislative Budget Committee, extend coverage for drug benefits to a full-benefit dual eligible beneficiary for coverage periods of up to 30 days each. In no event shall the reimbursement authorized by this paragraph extend beyond May 16, 2006.*

(9) Any drug benefits made available to full-benefit dual eligible beneficiaries under the authority of this subdivision shall be limited to the funds appropriated by the Legislature to the department for this purpose. These drug benefits shall not be deemed to be an entitlement.

(g) (1) For the purposes of this section, a “full-benefit dual eligible beneficiary” means an individual who meets both of the following criteria:

(A) The beneficiary is eligible or would be eligible for coverage for the month for covered Part D drugs under a prescription drug plan under Part D of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-101 et seq.) or under a MA-PD plan under Part C of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-21 et seq.).

(B) Notwithstanding any other provision of this section, the beneficiary is determined eligible for full scope services, including drug benefits, for which federal financial participation is available.

(2) For the purposes of this section, “Medicare Drug Plan” means a prescription drug plan under Part D of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-101 et seq.) or under a MA-PD plan under Part C of Title XVIII of the Social Security Act (42 U.S.C. Sec. 1395w-21 et seq.) ~~seq.~~.

(h) Subdivisions (a) and (b) and paragraph (3) of subdivision (c) shall become operative on January 1, 2006.

SEC. 2. Section 2 of Chapter 2 of the Statutes of 2006 is amended to read:

Sec. 2. There is hereby appropriated from the General Fund the following sums:

(a) The sum of one hundred twenty-seven million five hundred thousand dollars (\$127,500,000) to the State Department of Health Services to implement subdivision (f) of Section 14133.23 of the Welfare and Institutions Code, ~~as contained in Section 1 of this act~~ *as amended during the 2006 portion of the 2005–06 Regular Session*. On June 30, 2007, the remaining balance of the appropriation made under this subdivision shall be reverted back to the General Fund.

(b) The sum of twenty-two million five hundred thousand dollars (\$22,500,000) for expenditure for the 2005–06 fiscal year in augmentation of, and for the purposes provided in, Item 9840-001-0001 of Section 2.00 of the Budget Act of 2005 (Chapter 38, Statutes of 2005).

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that Medi-Cal beneficiaries receive prescription drug benefits without delay or extra cost, it is necessary that this act take effect immediately.